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*Attorney for Respondent,*  
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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

ALMONT AMBULATORY  
SURGERY CENTER, LLC, a  
California limited liability company, et  
al.,

Plaintiffs,

v.

UNITEDHEALTH GROUP, INC.;  
UNITED HEALTHCARE SERVICES,  
INC., UNITED HEALTHCARE  
INSURANCE COMPANY;  
OPTUMINSIGHT, INC., and DOES 1  
through 20,

Defendants.

UNITED HEALTHCARE SERVICES,  
INC., UNITED HEALTHCARE  
INSURANCE COMPANY;  
OPTUMINSIGHT, INC.,

Counterclaim Plaintiffs,

v.

ALMONT AMBULATORY  
SURGERY CENTER, LLC, a  
California limited liability company; et  
al.,

Counterclaim Defendants.

Case No. 14-CV-03053-MWF (VBKx)

**COUNTERCLAIM DEFENDANT  
JULIAN OMIDI'S OBJECTION TO  
DECLARATION OF MICHELLE  
GRANT DKT 268-1**

Date: TBD

Time: TBD

Ctrm: TBD

Case assigned to: Honorable Michael W.  
Fitzgerald

Disqualification Motion Referred to:  
Honorable Otis D. Wright II

**COUNTERCLAIM DEFENDANT JULIAN OMIDI'S OBJECTION TO  
DECLARATION OF MICHELLE GRANT – DKT 268-1**

**COMES NOW**, Counterclaim Defendant Julian Omid (‘‘Mr. Omid’’) AND hereby submits this Objection to the Declaration of Michelle Grant (Dkt 268-1) submitted in Opposition to Mr. Julian Omid’s Motion to Recuse Judge Michael W. Fitzgerald (Dkt 256). This Objection is based on the Memorandum of Points and Authorities contained herein, the pleadings and papers on file in this action, and the argument of counsel presented at the hearing on the motion to recuse Hon. Michael W. Fitzgerald.

Dated: February 5, 2016

Respectfully submitted,

/s/ Robert J. Rice

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1           **A. Introduction.**

2           On January 20, 2016, Counterclaim Defendant Julian Omidì filed a Motion to  
3 Recuse Judge Michael Fitzgerald, see Dkt. 256. In response, the Counter-claim  
4 Defendants, United Healthcare Group, and its subsidiary plans and associated entities  
5 filed an Opposition to Mr. Omidì's Motion for Recusal (Dkt 268) to which they  
6 attached a Declaration of Michelle Grant where she sought to introduce into evidence  
7 as an exhibit an unsworn and hearsay letter from Assistant US Attorney Evan Davis  
8 to Attorney Robert Rice, counsel for Mr. Omidì. (Dkt 268-1 and 268-2). However,  
9 the Grant Declaration and the Exhibit the witness seeks to introduce in evidence are  
10 not only hearsay, but also lack foundation, authentication, and personal knowledge.

11           The Declaration from Attorney Grant lacks personal knowledge of any of the  
12 matters to which she wishes to testify. *Coca-Cola Co. v. Overlkanđ, Inc.*, 692 F.2d  
13 1250, 1255 (9th Cir. 1982) (affidavits lacking personal knowledge are inadmissible).  
14 She cannot authenticate the letter, nor can she lay any foundation for its truthfulness  
15 or veracity. *United States v. Dibble*, 429 F.2d 598 (9th Cir. 1970) (affidavit failing to  
16 authenticate documents should be disregarded). The entire Grant declaration lacks  
17 foundation and personal knowledge, and the declaration along with its exhibit should  
18 be excluded from evidence. *FDIC v. New Hampshire Ins. Co.*, 953 F.2d 478, 484  
19 (9th Cir. 1991) (affidavit containing testimony not admissible at trial subject to  
20 objection and should be stricken)

21           **B. Basis for Objection to Grant Declaration**

22           **1. Entire declaration**

23           This objection will examine each of Attorney Michelle Grant's statement. It  
24 will demonstrate she has no personal knowledge of any of the matters contained in  
25 her affidavit, nor can she authenticate any of the documents she has attached as  
26 exhibits. *Hoffman v. Applicators Sales & Services, Inc.*, 439 F.3d 9, 14 (1st Cir.  
27 2006) ("documents do not automatically become part of the record simply because  
28

1 they are the products of discovery.”) Her entire affidavit lacks personal knowledge  
2 and authentication, and should be stricken. *Hal Roach Studios, Inc. v. Richard*  
3 *Feiner & Co.*, 896 F.2d 1542, 1551 (9th Cir. 1989)(to be admissible documents  
4 attached to an affidavit as exhibits must be authenticated); 10A C. Wright, A. Miller  
5 & M Kane, Federal Practice and Procedure sec. 2722, at 382 (3d ed. 1998).

6 The declarant has laid no foundation of the circumstances existing at the time  
7 for any of the events concerning the document she seeks to introduce as an exhibit.  
8 *SEC v. Phan*, 500 F.3d 895, 913 (9th Cir. 2007) (affiant must establish foundation for  
9 attached documents in manner permitted by Rules 901(b) or 902 of the Federal Rules  
10 of Evidence). Lacking foundation, authentication, and personal knowledge, the  
11 testimony and Exhibit “A” should be stricken.

12 **2. Attorney Grant’s declaration lacks personal knowledge.**

13 Michelle Grant, an attorney for Counter-Claimant, testifies that “I make this  
14 Declaration based on personal knowledge and would be able to testify to the facts .”  
15 (Grant Dec., p. 1, lines 3-5). However, the statement is an inadmissible legal  
16 conclusion. *SEC v. Phan*, 500 F.3d 895, 913 (9th Cir. 2007). Affidavits containing  
17 conclusions and speculation are not competent evidence and should not be considered  
18 by the Court. *Schwimmer v. Sony Corp. of America*, 637 F.2d 41, 43 (2d Cir. 1980)  
19 (affidavits containing conclusions are a nullity.). The witness’ claim that she has  
20 personal knowledge and could testify to the facts, such as the unauthenticated letter  
21 she attaches as Exhibit “A” is speculation and conjecture. *Fajardo Shopping Center*  
22 *v. Sun Alliance Ins.*, 167 F.3d 1, 11 (1st Cir. 1999) (unsupported speculation or  
23 conjecture is insufficient in affidavits).

24 **2. Attorney Grant cannot authenticate Exhibit “A”**

25 Attorney Grant’s familiarity with document she attaches as Exhibit “A” is  
26 irrelevant. *U.S. Structures, Inc. v. J.P. Structures, Inc.*, 130 F.3d 1185, 1189 (6th Cir.  
27 1977)(irrelevant evidence should be disregarded when contained in an affidavit). For  
28

1 an attorney to attempt to testify concerning documents of which she knowingly has  
2 no personal knowledge is incompetent. *Hunt Wesson Foods, Inc. v. Ragu Foods,*  
3 *Inc.*, 627 F.2d 919, 928 (9th Cir. 1980) (declarant must be competent to authenticate  
4 documents of which declarant must have personal knowledge). Affidavits which  
5 state that “I am familiar with the following facts” are not based on personal  
6 knowledge and are “red flags” of hearsay. 3 W. Schwarzer, A. Tashima & J.  
7 Wagstaffe, California Practice Guide – Federal Civil Procedure Before Trial §  
8 14:164, at 14-68 (2010).

9 **3. Attorney Grant’s testimony is hearsay**

10 Attorney Grant testifies “Attached hereto as Exhibit 1 is a true and correct  
11 letter dated February 1, 2016, from Evan J. Davis at the United States Department of  
12 Justice United States Attorney’s Office to counsel.” (Grant Dec., p. 1, lines 7-9).  
13 However, this “conclusion” lacks foundation and is hearsay. *Rossi v. Trans World*  
14 *Airlines*, 507 F.2d 404, 406 (9th Cir. 1974). The entire content of the exhibit is  
15 hearsay and inadmissible. *Scosche Industries, Inc. v. Visor Gear, Inc.*, 121 F.3d 675,  
16 681 (9<sup>th</sup> Cir. 1997) (hearsay evidence in affidavits is entitled to no weight). The  
17 exhibit precludes confronting the hearsay declarant and is an improper attempt to  
18 place into evidence information which cannot be tested by cross-examination.  
19 *Cunanan v. INS*, 856 F.2d 1373, 1375 (9th Cir. 1988) (hearsay affidavits deny the  
20 right to cross-examination and may be fundamentally unfair).

21  
22 Dated: February 5, 2016

Respectfully submitted,

23  
24 /s/ Robert J. Rice

25 Robert J. Rice  
26 Attorney for Respondent,  
JULIAN OMIDI  
27  
28

**PROOF OF SERVICE**

I am employed and a resident of the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 6380 Wilshire Boulevard, Suite 820, Los Angeles, California, 90048.

On February 5, 2016, I served the document described as:

**COUNTERCLAIM DEFENDANT JULIAN OMIDI'S OBJECTION TO  
DECLARATION OF MICHELLE GRANT DKT 268-1**

Upon the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

\_\_\_\_\_ (By Mail) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after day of deposit for mailing contained in affidavit.

\_\_\_\_\_ (By Facsimile Transmission) I caused the foregoing document to be served by facsimile transmission to each of the interested parties at the facsimile machine telecopy number shown in the service list attached hereto.

  X   (By Electronic Mail/ECF) Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 1/5/2016, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated in the attached service list below:

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 5, 2016, at Los Angeles, California.

/s/ Robert J. Rice

Robert J. Rice

**SERVICE LIST**

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